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**LEGISLATIVE EDUCATION STUDY COMMITTEE**  
**BILL ANALYSIS**  
**55th Legislature, 2nd Session, 2022**

<b>Bill Number</b>	<u>HB87/aHEC</u>	<b>Sponsor</b>	<u>Lente</u>
<b>Tracking Number</b>	<u>.221882.2</u>	<b>Committee Referrals</b>	<u>HEC/HAFC</u>
<b>Short Title</b>	<u>Indian Education Fund Distributions</u>		
<b>Analyst</b>	<u>Estupiñan</u>	<b>Original Date</b>	<u>1/28/22</u>
		<b>Last Updated</b>	<u>2/4/22</u>

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**BILL SUMMARY**

Synopsis of HEC Amendment

The House Education Committee amendment to HB87 removes language requiring a “joint powers agreement” and replaces it with “intergovernmental agreement.”

Synopsis of Bill

HB87/aHEC would require, beginning in FY24, a minimum of 70 percent of distributions from the Indian education fund be made to tribal governments. From FY24 to FY28, 90 percent of those distributions would be allocated in equal amounts to each tribe in New Mexico and the remaining 10 percent would be proportionally allocated to tribes using a formula that considers tribal capacity needs and the number of students served by the tribal education department.

Beginning in FY29, 70 percent would be allocated equally and 30 percent distributed through the formula. The Public Education Department (PED) would also be required to enter into a joint powers agreement with tribes to disburse the aforementioned funds.

**FISCAL IMPACT**

HB87/aHEC appropriates \$20 million from the general fund to the Indian education fund for expenditure in FY24 and subsequent fiscal years. Any unexpended or unencumbered balance remaining at the end of each fiscal year shall not revert to the general fund.

With 23 sovereign tribes, pueblos, and nations, the appropriation in HB87/aHEC would equate to an initial base allocation of approximately \$547,826 to each sovereign entity. Mandating that 90 percent of the Indian education fund’s direct disbursements be allocated equally among the 23 tribes enhances each sovereign entities’ ability to build capacity within their respective communities. Those larger initial base allocations increase the ability of smaller tribes to plan, build, and deliver integrated student supports, tribal community-based networks, and formal coordination with public schools. Beginning in FY29, those equal allocations would be partially

supplanted by a formula that distributes funds on the basis of student enrollment and the need to invest in building local capacity.

Additional allocations would depend on capacity needs and the number of students served by the local tribal education department. While the bill specifies the metrics to be used in the distribution formula, it does not explicitly define how capacity needs should be assessed by PED when allocating funds through the formula.

Of note, requiring a higher percentage of funds from the Indian education fund to flow directly to tribes may reduce PEDs capacity to invest in programs and initiatives serving Native American students who are not enrolled members of a tribe, pueblo, or nation, thereby potentially narrowing the number of Native American students who can be served by funds from the Indian education fund.

In FY22, the Indian education fund received \$5.25 million. For FY23, The House Appropriations and Finance Committee substitute for House Bill 2 appropriates \$15 million for the Indian education fund.

## **SUBSTANTIVE ISSUES**

Historically, the Indian education fund has allocated funds through grants to local education agencies and tribal education departments. Those funds are generally expended on educational services for Native American students that address the findings in the *Martinez-Yazzie* education sufficiency lawsuit as well as the statutory requirements of the Indian Education Act. The fund has also been a primary source of funding for tribal education departments. While there have historically been federal grants for tribal education departments, those funds have usually been allocated through a competitive grant process for use in schools funded by the federal Bureau of Indian Education.

Currently, PED provides grants to tribal governments through a request for applications process. Tribal representatives have noted this process limits the flexibility of local leaders to design programming independent of PED requirements. By transitioning to a joint powers agreement, tribal communities hope to gain additional flexibility in programs and initiatives they see as the best fit for their communities.

## **OTHER SIGNIFICANT ISSUES**

**Tribal Remedy Framework.** In the full report of the Tribal Remedy Framework, the document described the allocations to the Indian education fund as being insufficient to meet the needs of tribal communities. Additionally, the report described tribal education departments as underfunded and lacking the capacity to quickly expend state grants, many of which arrive late in the academic year, which leave approximately one-third of grant funds unexpended and at risk of reversion to the state.

**Learning Loss Related to Covid-19.** The pandemic has widened inequities in student outcomes, particularly for Native American students, specifically because of disparities in access to broadband internet, mental and behavioral health supports, and a variety of public services, including high-quality infrastructure and educational facilities.

**RELATED BILLS**

- HB 60 Native American Language Certificate Salaries
- HB 118 Tribal Agreements with Early Childhood Department
- HB 88 Yazzie Lawsuit Appropriations
- HB 89 Tribal Education Resource Centers
- HB 90 Appropriations for Yazzie Lawsuit Education

**SOURCES OF INFORMATION**

- LESC Files

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